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THE MONTANA JUDICIAL SYSTEM

- A PLAN AND A DISCUSSION -

Submitted to

THE MONTANA CONSTITUTIONAL CONVENTION

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INTRODUCTORY STATEMENT

The Constitutional Convention, now in session, must consider changes in the judicial system of the State of Montana. The Montana Citizens Conference has submitted a Proposed Judicial Article providing for sweeping changes in the structure of our judicial system. No reasonable alternative to such proposal has been made, either by the Bench, the Bar, or any interested citizen. It is the purpose of this report to suggest an alternate plan for consideration of the Convention and to discuss the proposal submitted by the Citizens Conference in order that all aspects may be carefully considered so that the provisions finally agreed upon may be for the best interests of all of the citizens of this State and have lasting value.

In discussing the Proposed Judicial Article submitted by the Citizens Conference, it is not intended to be critical of their proposal other than to point out defects which, in the opinion of the writer, should and ought to be corrected.

In any such discussion, certain principles must be considered before any plan can be viewed in a proper perspective. The following principles seem important.

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I.

A constitutional provision should be clear, concise and simple.

II.

A constitutional provision should be flexible and should not "lock in" its provisions so there cannot be change without constitutional amendment.

III.

A constitution should not be "cluttered up" with administrative detail, but should provide a broad structure for a judicial system where the details can be changed from time to time as is deemed necessary by the Legislative Assembly.

IV.

The Legislative Assembly should have the power to discuss, debate, and make changes within the structure as the needs of the people require.

V.

There should be uniformity among the courts throughout the State.

Of related interest is a consideration of the purpose of revision of our judicial system in Montana. Obviously, it is to remove from the Constitution provisions that are now ineffective or are surplusage. It is to change those provisions which have not been effective, but primarily the purpose of any revision is to provide a constitutional

structure for the operation of our judicial system in the State of Montana without commitment to any one plan or any one method.

With these comments in mind, it is the purpose of this article to advance a plan for the judicial system in Montana and to discuss the plan submitted by the Citizens Conference. The fact that the proposal of the Citizens Conference is entitled, "A Montana Plan," does not aid in consideration of the merits of the plan. After all, a name is merely a name and if our proposal is accepted by the Convention, it will then be in fact, The Montana Plan.

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A PROPOSED JUDICIAL ARTICLE

SECTION I

THE JUDICIAL POWER OF THE STATE SHALL BE VESTED IN A SUPREME COURT, IN DISTRICT COURTS AND SUCH OTHER COURTS AS MAY BE PROVIDED BY LAW.

SECTION II

THE SUPREME COURT SHALL HAVE APPELLATE JURISDICTION AND GENERAL SUPERVISORY CONTROL OVER ALL OTHER COURTS WITH THE POWER TO MAKE RULES AND REGULATIONS NOT INCONSISTENT WITH STATE LAW.

SECTION III

THE SUPREME COURT SHALL CONSIST OF A CHIEF JUSTICE AND FOUR ASSOCIATE JUSTICES, A MAJORITY OF WHOM SHALL BE NECESSARY TO FORM A QUORUM OR PRONOUNCE A DECISION. THE LEGISLATIVE ASSEMBLY SHALL HAVE THE POWER TO INCREASE THE NUMBER OF ASSOCIATE JUSTICES TO SIX. DISTRICT JUDGES MAY BE SUBSTITUTED FOR ANY JUSTICE IN ANY CAUSE, AND ANY DECISIONS OR OPINION OF THE DISTRICT JUDGE

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SHALL HAVE THE SAME FORCE AND EFFECT AS IF REGULARLY PARTICIPATED IN BY A JUSTICE OF THE SUPREME COURT.

SECTION IV

THE DISTRICT COURTS SHALL HAVE ORIGINAL JURISDICTION OF ALL JUSTICIABLE MATTERS, BOTH CIVIL AND CRIMINAL, INCLUDING JURISDICTIONS TO ISSUE ORIGINAL AND REMEDIAL WRITS, WHICH MAY BE ISSUED AND SERVED ON LEGAL HOLIDAYS AND NON JUDICIAL DAYS, PROCESS OF DISTRICT COURTS SHALL EXTEND TO ALL PARTS OF THE STATE. JURISDICTION TO REVIEW ADMINISTRATIVE ACTIONS SHALL BE PROVIDED BY LAW. THERE SHALL BE THE POWER OF NATURALIZATION, AND TO ISSUE PAPERS THEREFOR, IN ALL CASES WHERE THEY ARE AUTHORIZED TO DO SO BY THE LAWS OF THE UNITED STATES.

SECTION V

THE LEGISLATIVE ASSEMBLY SHALL DIVIDE THE STATE INTO JUDICIAL DISTRICTS AND PROVIDE FOR THE NUMBER OF JUDGES IN EACH JUDICIAL DISTRICT. THE LEGISLATIVE ASSEMBLY SHALL

HAVE THE POWER TO CHANGE THE NUMBER OF JUDICIAL DISTRICTS OR THEIR BOUNDARIES AND THE NUMBER OF JUDGES IN EACH DISTRICT.

SECTION VI

THE JUSTICES OF THE SUPREME COURT AND ALL OTHER JUDGES OR MAGISTRATES SHALL HAVE SUCH QUALIFICATIONS, AND SHALL BE SELECTED OR APPOINTED, AND SHALL SERVE OR BE REMOVED, IN SUCH MANNER AND UNDER SUCH CONDITIONS AS THE LEGISLATIVE ASSEMBLY SHALL PROVIDE BY LAW. ALL VACANCIES FOR CHIEF JUSTICE AND ASSOCIATE JUSTICE OF THE SUPREME COURT AND DISTRICT COURT JUDGE SHALL BE FILLED BY APPOINTMENT BY THE GOVERNOR IN SUCH MANNER AS THE LEGISLATIVE ASSEMBLY MAY PROVIDE BY LAW.

DISCUSSION

In order to compare the different plans that have been proposed, we shall proceed to set forth each section, side by side, so that they can be discussed more fully.

A copy of the present constitutional provisions are made a part of the appendix for ready reference.

Section I. The judicial power of the State shall be vested in a Supreme Court, in District Courts and such other courts as may be provided by law.

Section 1. The Judicial power of the State shall be vested in the senate sitting as a court of impeachment, and in a Supreme Court and district courts which shall be courts of record. (Citizens Conference)

Comment:

1. We believe that our proposal has sufficient flexibility to accomodate any system and is not committed to a particular form of judicial system. Other courts may be required.

2. Impeachment is an archaic and ineffective method that is inappropriate in the present day, especially under due process. All public officers can be tried in a court of law-----even judges, and we believe this provision should be eliminated.

3. The provision for courts of record is merely an administrative detail and the manner and form should be left to Legislative decision.

Section 2. The Supreme Court shall have appellate jurisdiction and general supervisory control over all other courts with the power to make rules and regulations not inconsistent with State law.

Section 2. The Supreme Court, except as otherwise provided in this constitution, shall have appellate jurisdiction, which shall be coextensive with the state, and shall have a general supervisory and administrative control over all inferior courts. (Citizens Conference)

Comment:

1. An appellate jurisdiction is a term with a fixed meaning and understood by Bench and Bar. It includes appeals and special writs as may be provided by State law.

2. The power of the court is coextensive with the State and such phrase is surplusage.

3. Supervision by rule and regulation can include administrative detail if deemed necessary and within State law.

4. The rule making power is appropriate subject to the limitations and controls of State law-----the checks and balance feature which is a part of our heritage.

Section 3. The Supreme Court may appoint an administrative director and staff, who shall serve at its pleasure, to assist the court and the chief justice in the performance of administrative duties. (Citizens Conference)

Comment: This has been eliminated from our proposal for the following reasons:

1. This is permissive judicial action-----when needed--with no checks and balances.

2. Financing could be a consideration and the court could create a vast machinery at great cost, merely drawing on the State treasury without restraint or control.

3. The courts should be required to adopt a plan, determine cost, and submit this to the Legislature for approval just like anyone else-----when the need arises, or when the need changes.

4. Administrative director and staff should not be a constitutional office, even if permissive (may). This, again, is an internal administrative detail not rising to constitutional significance.

Section 4. The Supreme Court shall have power to make and promulgate rules and regulations in all civil and criminal cases for all courts relating to practice, procedure, pleading, evidence, and judicial administration, which shall have the force and effect of law. (Citizens Conference)

Comment: We have eliminated this provision based on the following:

1. The rule making power is included in our Section 2 and is not needed.

2. The rule making power should not be inconsistent with State law. After all, the power of the people to decide is vested in our elected representatives and what the law should be should not be defeated by the Supreme Court Justices. They are not empowered to change the law traditionally, and they should not have a grant of power to do so.

3. Any appropriate rule is binding and thus would have the force of law, therefore, this phrase is surplusage.

Section 5. The appellate jurisdiction of the Supreme Court shall extend to all cases at law and in equity, subject, however, to such limitations and regulations as may be prescribed by law. Said court shall have power in its discretion to issue and to hear and determine writs of habeas corpus, mandamus, quo warranto, certiorari, prohibition, injunction, supervisory control and such other original and remedial writs as may be necessary or proper to the complete exercise of its appellate jurisdiction. Each of the justices of the Supreme Court shall have power to issue writs of habeas corpus to any part of the state, upon

petition by or on behalf of any person held in actual custody, and may make such writs returnable before the Supreme Court, and such writs may be heard and determined by the court. (Citizens Conference)

Comment: We have eliminated this section for the following reasons:

1. Appellate jurisdiction does extend to all cases at law or in equity. This is surplusage and is covered by Section 2.

2. Limitations and regulations as provided by law is an inherent right of the legislative process to govern or limit the function and role of the Supreme Court in certain instances. This provision is surplusage.

3. The rule making power granted in Section 2 will govern its appellate jurisdiction in all of its administrative details if not otherwise provided by law, so that such provisions here are surplusage.

4. The various special writs recited in this provision is a basic and traditional part of "appellate jurisdiction" and is surplusage. The scope of the special writs can be governed by State law or under the rule making power. In short, the power and authority is granted.

5. Flexibility is necessary so as not to limit the right to relief merely by a recitation of certain special writs. Our needs may change and the form of relief may be

altered as befits our needs at a particular time in the future. This provision could limit Legislative changes, and could limit the rule making power granted to the court.

6. The provisions of this section which set forth a specific method of procedure, while permissive, can be self-limiting. The mere fact it is permissive demonstrates a concern for a possible different approach than provided in this section. Why limit by constitutional provision if it need not be followed?

Section 3. The Supreme Court shall consist of a chief justice and four associate justices, a majority of whom shall be necessary to form a quorum or pronounce a decision. The Legislative Assembly shall have the power to increase the number of associate justices to six. District judges may be substituted for any justice in any cause, and any decisions or opinion of the district judge shall have the same force and effect as if regularly participated in by a justice of the Supreme Court.

Section 6. The Supreme Court shall consist of a chief justice and four associate justices, a majority of whom shall be necessary to form a quorum or pronounce a decision, but one or more of said justices may adjourn the court from day to day, or to a day certain, and the legislative assembly shall have the power to increase the number of associate justices

to six. In case any justice of the Supreme Court shall be in any way disqualified to sit in a cause brought before such court, the remaining justice or justices shall have the power to call on one or more of the district judges of this state as in the particular case may be necessary to constitute the full number of justices of which the said court shall then be composed, to sit with them in the hearing of said cause. In all cases where a district judge is invited to sit and does sit as by this section provided, the decision and opinion of such district judge shall have the same force and effect in any cause heard before the court as if regularly participated in by a justice of the Supreme Court. The chief justice shall preside at all sessions of the Supreme Court. In case of his absence, he shall appoint an associate justice to preside in his stead. (Citizens Conference)

Comment: We believe our provision is much preferable for the following reasons:

1. The make-up of the court is provided for with the power to increase the number of justices, the power of substitution is granted, and the binding effect given. The rule making power previously granted in Section II is made flexible to permit the handling of the internal and administrative affairs of the court as a need from time to time arises. As an example, sickness is not covered in this

constitutional provision. Thus, the specifics of administrative detail, such as the basis of appointment of district judges to act, the adjournment of the court, the method of presiding at sessions, are left to the decision of the court under its rules and regulations and not "locked in" by constitutional provisions. Thus these provisions are limiting.

Section 7. There shall be a clerk of the Supreme Court. He shall be appointed by and hold his office at the pleasure of the Supreme Court. His compensation shall be fixed by law, and his duties by the rules of the Supreme Court. (Citizens Conference)

Comment:

1. The clerk of the Supreme Court should not be a constitutional office, or for that matter, a constitutional non office.

2. This is a matter of internal organization of the court. If deemed necessary, an appropriate Legislative act can change the manner of selection of the clerk. Why clutter up the constitution with this detail?

3. Again, if this provision is enacted we "lock in" the manner of appointment and say, "this is the only way." An inflexible constitution is to be avoided, especially as to detail in internal organization.

Section 4. The district courts shall have original jurisdiction of all justiciable matters, both civil and criminal, including jurisdictions to issue original and remedial writs, which may be issued and served on legal holidays and non judicial days, process of district courts shall extend to all parts of the State. Jurisdiction to review administrative actions shall be provided by law. There shall be the power of naturalization, and to issue papers therefor, in all cases where they are authorized to do so by the laws of the United States.

Section 8. The district courts shall have original jurisdiction of all justiciable matters, both civil and criminal, including jurisdiction to issue original and remedial writs. Their process shall extend to all parts of the state, and injunctions, writs of prohibition and habeas corpus, may be issued and served on legal holidays and nonjudicial days. Jurisdiction to review administrative action shall be provided by law. They shall have power of naturalization, and to issue papers therefor, in all cases where they are authorized to do so by the laws of the United States. (Citizens Conference)

Comment:

1. These sections are substantially the same granting certain powers to the district court.

2. The special writs by whatever name, are, in law, extraordinary and should be issued and served at any time. This seems preferable.

Section 9. The judge or judges of each district may, with the approval of the chief justice of the Supreme Court, provide for divisions and assign judges to particular types of cases and create one or more magistrates' offices. Magistrates shall be appointed by the district judge or judges of each district and assigned to such matters and such cases as shall be prescribed by the judge or judges of each district, except criminal cases amounting to felonies in which magistrates may act only as committing and examining courts. Magistrates shall exercise the jurisdiction of district courts in all matters and cases assigned to them and shall serve at the pleasure of the appointing judge or judges. Compensation of magistrates shall be fixed by the appointing judge or judges. (Citizens Conference)

Comment:

1. We have eliminated the provision for selection of inferior courts and magistrates by a district judge for the reason that the Legislative Assembly should determine the composition of inferior courts and the scope of their authority and their jurisdiction.

2. There should be some uniformity of courts throughout the State and this will change by enactment of this provision.

3. There is no check or balance to this unlimited power vested in a district judge.

4. The scope of the jurisdiction of lower courts, the ability to act, the compensation and qualifications of presiding officers, is of fundamental State concern. To vest this power in the district judge without standards or guidelines by the Legislative Assembly is of doubtful constitutional tolerance.

Section 5. The Legislative Assembly shall divide the State into judicial districts and provide for the number of judges in each judicial district. The Legislative Assembly shall have the power to change the number of judicial districts of their boundaries and the number of judges in each district. Section 10. The state shall be divided into judicial districts as provided by law, in each of which there shall be the number of judges provided by law. The Supreme Court may increase or decrease the number of judges in any judicial district, and may divide the state or any part thereof, into new districts, provided that each be formed of compact territory and be bounded by county lines. Changes by the Supreme Court in districts or the number of judges therein shall be effective unless rejected by the legislature at the

legislative session following the change. No change in the number or boundaries of districts or diminution of the number of judges, shall have the effect of removing a judge from office. Such change in districts or the number of judges therein shall not take place more frequently than every four years. (Citizens Conference)

Comment:

1. The power to create judicial districts and the number of judges should be a matter of constitutional Legislative concern.

2. Changes in the judicial structure of the State is so substantial that it should not be precipitate. The Legislative Assembly, based on information submitted, should have the opportunity to change the structure when needed by changing the law. This is so basic that changes should be made only after Legislative debate on all the pertinent issues.

3. To include the current proposal would allow "jerrymandered" districts without legislative control and would be effective where there is a "failure to act." To change our judicial structure by non action of the Legislature is of doubtful constitutional merit. Surely this is not the best provision for the people of this State.

Section 11. There shall be a clerk of the district court in each county. He shall be appointed by the judge or judges of the district in which the county is situated and shall hold his office at the pleasure of that court. Deputy clerks may be appointed by the judge or judges of each district, and shall hold office at the pleasure of the appointing judge or judges. The number of deputy clerks to be appointed shall be subject to the approval of the chief justice of the Supreme Court. The duties of clerks and deputy clerks shall be prescribed by the appointing judge or judges. (Citizens Conference)

Comment:

1. Our constitution should not be cluttered up with administrative detail.

2. A clerk of the district court should not be a constitutional office-------times change.

3. This provision is inflexible and can be changed only by constitutional amendment.

4. Voters may want to vote for a clerk of the district court.

5. Qualifications, salary, tenure, duties and responsibilities are matters of Legislative concern and should not be left to one man. (Example - retirement benefits.)

6. There would be no uniformity of treatment.

Section 6. The justices of the Supreme Court and all other judges or magistrates shall have such qualifications, and shall be selected or appointed, and shall serve or be removed, in such manner and under such conditions as the Legislative Assembly shall provide by law. All vacancies for chief justice and associate justice of the Supreme Court and district court judge shall be filled by appointment by the Governor in such manner as the Legislative Assembly may provide by law.

Comment:

1. We have provided that it shall be the duty and responsibility of the Legislative Assembly to determine qualifications, manner of selection or appointment, terms or conditions of service, or removal. We believe this provision preferable and more flexible.

2. The balance of the provisions set forth by the Citizens Conference provide for qualifications, selection and removal under a committee system and is a commitment to a particular form of selection that can be changed only by constitutional amendment.

3. It is cluttered up with administrative detail and provisions that may not be workable and would require constitutional amendment.

4. This is not to suggest that the Legislative Assembly might not accept such a plan and put it into operation as

representing the will of the people. Yet, we believe a single plan has no place in a constitution which should be broad enough to embrace any and all systems and proposals.

5. The balance of the provisions are merely as to limitations or qualifications and they are now present in our law and can remain without amendment or change unless the Legislative Assembly decides otherwise.

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C O N C L U S I O N

The purpose of the proposed plan and the discussion is simply to encourage interest in our judicial system and to suggest possible changes that would be good for the State of Montana. It is presented to aid and assist the Constitutional Convention by arriving at a plan that provides a structure for our judicial system in Montana that will be, in their judgment, in the best interests of the State. We are concerned with our system of justice. We are concerned with the structure under which it operates. We need the best possible system for the citizens of this State.

Respectfully submitted,

Charles F. Moses

A P P E N D I X

CONSTITUTION
of the
STATE OF MONTANA

ARTICLE VIII

JUDICIAL DEPARTMENTS

Section 1. The judicial power of the state shall be vested in the senate sitting as a court of impeachment, in a supreme court, district courts, justices of the peace, and such other inferior courts as the legislative assembly may establish in any incorporated city or town.

SUPREME COURT

Section 2. The supreme court, except as otherwise provided in this constitution, shall have appellate jurisdiction only, which shall be co-extensive with the state, and shall have a general supervisory control over all inferior courts, under such regulations and limitations as may be prescribed by law.

Section 3. The appellate jurisdiction of the supreme court shall extend to all cases at law and in equity, subject, however, to such limitations and regulations as may be prescribed by law. Said court shall have power in its discretion to issue and to hear and determine writs of habeas corpus, mandamus, quo-warranto, certiorari, prohibition, and injunction, and such other original and remedial writs as may be necessary or proper to the complete exercise of its appellate jurisdiction. When a jury is required in the supreme court to determine an issue of fact, said court shall have power to summon such jury in such manner as may be provided by law. Each of the justices of the supreme court shall have power to issue writs of habeas corpus to any part of the state, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable

before himself, or the supreme court, or before any district court of the state, or any judge thereof; and such writs may be heard and determined by the justice or court, or judge, before whom they are made returnable. Each of the justices of the supreme court may also issue and hear and determine writs of certiorari in proceedings for contempt in the district court, and such other writs as he may be authorized by law to issue.

Section 4. At least three terms of the supreme court shall be held each year at the seat of the government.

Section 5. The supreme court shall consist of three justices, a majority of whom shall be necessary to form a quorum or pronounce a decision, but one or more of said justices may adjourn the court from day to day, or to a day certain and the legislative assembly shall have the power to increase the number of said justices to not less nor more than five. In case any justice of the supreme court shall be in any way disqualified to sit in a cause brought before such court, the remaining justice or justices shall have power to call on one or more of the district judges of this state as in the particular case may be necessary to constitute the full number of justices of which the said court shall then be composed, to sit with them in the hearing of said cause. In all cases where a district judge is invited to sit and does sit as by this section provided, the decision and opinion of such district judge shall have the same force and effect in any cause heard before the court as if regularly participated in by a justice of the supreme court.

Section 6. The justices of the supreme court shall be elected by the electors of the state at large, as hereinafter provided.

Section 7. The term of office of the justices of the supreme court, except as in this constitution otherwise provided, shall be six years.

Section 8. There shall be elected at the first general election, provided for by this constitution, one chief justice and two associate justices of the supreme court. At said first election the chief justice shall be elected to hold his office until the general election in the year one thousand

eight hundred ninety-two (1892), and if the legislative assembly shall increase the number of justices to five, the first terms of office of such additional justices shall be fixed by law in such manner that at least one of the five justices shall be elected every two years. The chief justice shall preside at all sessions of the supreme court, and in case of his absence, the associate justice having the shortest term to serve shall preside in his stead.

Section 9. There shall be a clerk of the supreme court, who shall hold his office for the term of six years, except that the clerk first elected shall hold his office only until the general election in the year one thousand eight hundred ninety-two (1892), and until his successor is elected and qualified. He shall be elected by the electors at large of the state, and his compensation shall be fixed by law, and his duties prescribed by law, and by the rules of the supreme court.

Section 10. No person shall be eligible to the office of justice of the supreme court, unless he shall have been admitted to practice law in the supreme court of the territory or state of Montana, be at least thirty years of age, and a citizen of the United States, nor unless he shall have resided in said territory or state at least two years next preceding his election.

DISTRICT COURTS

Section 11. The district courts shall have original jurisdiction in all cases at law and in equity, including all cases which involve the title or right of possession of real property, or the legality of any tax, impost, assessment, toll or municipal fine, and in all cases in which the debt, damage, claim or demand, exclusive of interest, or the value of the property in controversy exceeds fifty dollars; and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for; of actions of forcible entry and unlawful detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate; of actions of divorce and for annulment of marriage, and for all such special actions and proceedings as are not otherwise provided for. And said courts shall have the power of naturalization, and to issue papers therefor, in all cases where they are authorized so to do by the laws of the United States. They shall have appellate jurisdiction in

such cases arising in justices and other inferior courts in their respective districts as may be prescribed by law and consistent with this constitution. Their process shall extend to all parts of the state, provided that all actions for the recovery of, the possession of, quieting the title to, or for the enforcement of liens upon real property, shall be commenced in the county in which the real property, or any part thereof, affected by such action or actions, is situated. Said courts and the judges thereof shall have power also to issue, hear and determine writs of mandamus, quo warranto, certiorari, prohibition, injunction and other original and remedial writs, and also all writs of habeas corpus on petition by, or on behalf of, any person held in actual custody in their respective districts. Injunctions, writs of prohibition and habeas corpus, may be issued and served on legal holidays and non-judicial days.

Section 12. The state shall be divided into judicial districts, in each of which there shall be elected by the electors thereof one judge of the district court, whose term of office shall be four years, except that the district judges first elected shall hold their offices only until the general election in the year one thousand eight hundred and ninety-two (1892), and until their successors are elected and qualified. Any judge of the district court may hold court for any other district judge, and shall do so when required by law.

Section 13. Until otherwise provided by law judicial districts of the state shall be constituted as follows: First district, Lewis and Clark county; second district, Silver Bow county; third district, Deer Lodge county; fourth district, Missoula county; fifth district, Beaverhead, Jefferson and Madison counties; sixth district, Gallatin, Park and Meagher counties; seventh district, Yellowstone, Custer and Dawson counties; eighth district, Choteau, Cascade and Fergus counties.

Section 14. The legislative assembly may increase or decrease the number of judges in any judicial district; provided, that there shall be at least one judge in any district established by law; and may divide the state, or any part thereof, into new districts; provided, that each be formed of compact territory and be bounded by county lines, but no changes in the number or boundaries of districts shall work a removal of any judge from office during the term for which he has been elected or appointed.

Section 15. Writs of error and appeals shall be allowed from the decisions of said district courts to the supreme court under such regulations as may be prescribed by law.

Section 16. No person shall be eligible to the office of judge of the district court unless he be at least twenty-five years of age and a citizen of the United States, and shall have been admitted to practice law in the supreme court of the territory or state of Montana, nor unless he shall have resided in this state or territory at least one year next preceding his election. He need not be a resident of the district for which he is elected at the time of his election, but after his election he shall reside in the district for which he is elected during his term of office.

Section 17. The district court in each county which is a judicial district by itself shall be always open for the transaction of business, except on legal holidays and non-judicial days. In each district where two or more counties are united, until otherwise provided by law, the judges of such district shall fix the term of court, provided that there shall be at least four terms a year held in each county.

Section 18. There shall be a clerk of the district court in each county, who shall be elected by the electors of his county. The clerk shall be elected at the same time and for the same term as the district judge. The duties and compensation of the said clerk shall be as provided by law.

COUNTY ATTORNEYS

Section 19. There shall be elected at the general election in each county of the state one county attorney, whose qualifications shall be the same as are required for a judge of the district court, except that he must be over twenty-one years of age, but need not be twenty-five years of age, and whose term of office shall be four years, and until their successors are elected and qualified. He shall have a salary to be fixed by law, one-half of which shall be paid by the state, and the other half by the county for which he is elected, and he shall perform such duties as may be required by law.

JUSTICES OF THE PEACE

Section 20. There shall be elected in each organized township of each county by the electors of such township at

least two justices of the peace, who shall hold their offices, except as otherwise provided in this constitution, for the term of two years. Justices' courts shall have such original jurisdiction within their respective counties as may be prescribed by law, except as in this constitution otherwise provided; provided, that they shall not have jurisdiction in any case where the debt, damage, claim or value of the property involved exceeds the sum of three hundred dollars.

Section 21. Justices' courts shall not have jurisdiction in any case involving the title or right of possession of real property, nor in cases of divorce, nor for annulment of marriage, nor of cases in equity; nor shall they have power to issue writs of habeas corpus, mandamus, certiorari, quo warranto, injunction, or prohibition, nor the power of naturalization; nor shall they have jurisdiction in cases of felony, except as examining courts; nor shall criminal cases in said courts be prosecuted by indictment; but said courts shall have such jurisdiction in criminal matters, not of the grade of felony, as may be provided by law; and shall also have concurrent jurisdiction with the district courts in cases of forcible entry and unlawful detainer.

Section 22. Justices' courts shall always be open for the transaction of business, except on legal holidays and non-judicial days.

Section 23. Appeal shall be allowed from justices' courts, in all cases, to the district courts, in such manner and under such regulations as may be prescribed by law.

POLICE AND MUNICIPAL COURTS

Section 24. The legislative assembly shall have power to provide for creating such police and municipal courts and magistrates for cities and towns as may be deemed necessary from time to time, who shall have jurisdiction in all cases arising under the ordinances of such cities and towns, respectively; such police magistrates may also be constituted ex-officio justices of the peace for their respective counties.

MISCELLANEOUS PROVISIONS

Section 25. The supreme and district courts shall be courts of record.

Section 26. All laws relating to courts shall be general and of uniform operation throughout the state; and the organization, jurisdiction, powers, proceedings and practice of all courts of the same class or grade, so far as regulated by law, shall be uniform.

Section 27. The style of all process shall be "The State of Montana," and all prosecutions shall be conducted in the name and by the authority of the same.

Section 28. There shall be but one form of civil action, and law and equity may be administered in the same action.

Section 29. The justices of the supreme court and the judges of the district courts shall each be paid quarterly by the state, a salary, which shall not be increased or diminished during the terms for which they shall have been respectively elected. Until otherwise provided by law, the salary of the justices of the supreme court shall be four thousand dollars per annum each, and the salary of the judges of the district courts shall be three thousand five hundred dollars per annum each.

Section 30. No justice of the supreme court nor judge of the district court shall accept or receive any compensation, fee, allowance, mileage, perquisite or emolument for or on account of his office, in any form whatever, except the salary provided by law.

Section 31. No justice or clerk of the supreme court, nor judge or clerk of any district court shall act or practice as an attorney or counsellor at law in any court of this state during his continuance in office.

Section 32. The legislative assembly may provide for the publication of decisions and opinions of the supreme court.

Section 33. All officers provided for in this article, excepting justices of the supreme court, who shall reside within the state, shall respectively reside during their term of office in the district, county, township, precinct, city or town for which they may be elected or appointed.

Section 34. Vacancies in the office of justice of the supreme court, or judge of the district court, or clerk of the supreme court, shall be filled by appointment, by the governor of the state, and vacancies in the offices of county attorney, clerk of the district court, and justices of the peace, shall be filled by appointment, by the board of county commissioners of the county where such vacancy occurs. A person appointed to fill any such vacancy shall hold his office until the next general election and until his successor is elected and qualified. A person elected to fill a vacancy shall hold office until the expiration of the term for which the person he succeeds was elected.

Section 35. No justice of the supreme court or district judge shall hold any other public office while he remains in the office to which he has been elected or appointed.

Section 36. A civil action in the district court may be tried by a judge pro tempore, who must be a member of the bar of the state, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the court, and sworn to try the cause; and in such case any order, judgment or decree, made or rendered therein by such judge pro tempore, shall have the same force and effect as if made or rendered by the court with the regular judge presiding.

Section 37. Any judicial officer who shall absent himself from the state for more than sixty consecutive days shall be deemed to have forfeited his office.

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